

# **Frequently Asked Employment Questions**

## **What protection does an employee have from termination by his or her employer?**

In general, an employer can discharge an employee for a good reason, bad reason, or no reason at all. An employee may challenge his/her discharge if it was based on discriminatory action specifically protected by statute. For example, an employer may not discriminate against an employee based on race, color, gender, religion, national origin, disability, protected union activity, age, or any other "protected category." If an employee belongs to a union, he/she may have a contractual right to be discharged only for "just cause." A union may challenge a discharge pursuant to the grievance/arbitration provision of the collective bargaining agreement.

## **Which agency do I contact if my employer has discriminated against me based on such factors as my race, age, religion, gender, national origin, or disability?**

The Equal Employment Opportunity Commission is a federal agency that investigates alleged discrimination based on "protected categories," such as, race, color, religion, gender, national origin, pregnancy, disability, age of forty years and older, and sexual harassment.

Equal Employment Opportunity Commission  
Patrick V. McNamara Building  
477 Michigan Avenue, Room 865  
Detroit, Michigan 48226  
(313) 226-4600  
[www.eeoc.gov](http://www.eeoc.gov)

The Michigan Department of Civil Rights is a state agency, which investigates claims of discrimination based on race, color, religion, national origin, gender, age, marital status, height, weight, disability, arrest record, and other protected categories.

Michigan Department of Civil Rights  
Cadillac Place  
3054 W. Grand Boulevard, Suite 3-600  
Detroit, Michigan 48202  
(313) 456-3700  
[www.michigan.gov/mdcr](http://www.michigan.gov/mdcr)

## **Which agency do I contact if I am having issues with my wages, overtime, or benefits?**

The Michigan Department of Labor and Economic Growth (DLEG) Wage and Hour Division handles issues relating to the payment of wages and benefits, minimum wage, overtime, youth employment, and prevailing wage.

Michigan Department of Labor and Economic Growth  
Wage and Hour Division  
Bureau of Safety and Regulation  
7150 Harris Drive  
PO Box 30015  
Lansing, Michigan 48909  
(517) 322-1825  
[www.michigan.gov/wagehour](http://www.michigan.gov/wagehour)

**Which agency do I contact if I have an issue related to minimum wage, prevailing wage, overtime, break time, hours of work, child labor, polygraphs, or the Family and Medical Leave Act?**

The U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division administers federal laws related to minimum wage, prevailing wage, overtime, break time, hours of work, child labor, polygraphs, and the Family and Medical Leave Act. The U.S. Department of Labor, Wage and Hour Division maintains offices in Detroit and Grand Rapids.

Detroit District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
211 W. Fort Street, Room 1317  
Detroit, Michigan 48226-3237  
(866) 487-9243  
**[www.dol.gov/esa/whd](http://www.dol.gov/esa/whd)**

Grand Rapids Office  
US Dept. of Labor  
ESA Wage & Hour Division  
800 Monroe Ave, NW Suite 315  
Grand Rapids, Michigan 49503-1451  
(866) 487-9243  
**[www.dol.gov/esa/whd](http://www.dol.gov/esa/whd)**

**Which agency do I contact if I want to file for unemployment insurance?**

Persons wishing to file for unemployment insurance may contact the Unemployment Insurance Agency at (800) 638-3995. Employers wishing to contact the UIA may call (800) 638-3994. The UIA's web address is **[www.michigan.gov/uia](http://www.michigan.gov/uia)**.

**Which agency do I contact if I have issues relating to workplace safety or workplace injuries?**

The Occupational Safety and Health Administration (OSHA), is a federal agency that regulates workplace safety and health issues in the private sector. The Michigan Occupational Safety and Health Administration (MIOSHA), a DLEG agency, regulates safety and health issues in the workplace.

**OSHA's Michigan Office:**  
U.S. Department of Labor  
Occupational Safety and Health Admin.  
315 West Allegan  
Room 207  
Lansing, Michigan 48933  
(517) 487-4996  
(517) 487-4997 (Fax)  
**[www.osha.gov](http://www.osha.gov)**

**MIOSHA's contact information is:**  
Michigan Dept. of Labor and Economic Growth  
Michigan Occupational Safety and Health Admin.  
P.O. Box 30643  
7150 Harris Drive  
Lansing, Michigan 48909-8143  
(800) 866-4674  
**[www.michigan.gov/miosha](http://www.michigan.gov/miosha)**

An individual injured while working should contact his or her employer. If the issue remains unresolved, the individual should contact DLEG's Workers' Compensation Agency.

**The Workers' Compensation Agency's contact information is:**  
Michigan Department of Labor & Economic Growth  
Workers' Compensation Agency  
7150 Harris Drive  
P.O. Box 30016  
Lansing, Michigan 48909-8143  
(888) 396-5041  
**[www.michigan.gov/wca](http://www.michigan.gov/wca)**

**Referrals to private attorneys who will provide an initial consultation at a nominal cost are available via the Michigan State Bar Hotline - telephone number (800) 968-1442. Union members may wish to contact their union representative.**

## **Frequently Asked Questions About MERC/BER**

### **What is the Bureau of Employment Relations?**

The Bureau of Employment Relations (BER) is a state agency that provides administrative support to the Michigan Employment Relations Commission (MERC). BER conducts elections to determine if employees wish to be represented by a union and provides labor contract and grievance mediation. BER also maintains a panel of neutral decision makers to conduct compulsory arbitration proceedings for public safety personnel and fact finding proceedings for other public sector employees.

Administrative Law Judges, who are employees of the State Office of Administrative Hearings and Rules (SOAHR), conduct hearings for MERC. ALJs hear union representation matters for the Commission; they also issue recommended orders in unfair labor practice cases. Appeals of recommended orders are decided by MERC.

### **What is the Michigan Employment Relations Commission (MERC), and what laws does MERC administer?**

The Michigan Employment Relations Commission (MERC) is an independent body, charged with administering various laws governing labor-management relations. The Commission is comprised of three members – one of whom is the designated chairman. The principal statute administered by MERC is the Public Employment Relations Act (PERA), which grants collective bargaining rights to public employees and defines employer and union unfair labor practices. MERC also administers the Labor Mediation Act -- a law governing labor relations for private sector employers and employees not within the exclusive jurisdiction of the National Labor Relations Act. MERC has concurrent jurisdiction with the Federal Mediation and Conciliation Service over mediation functions in the private sector. Finally, MERC administers Act 312 of 1969, which provides for compulsory binding arbitration of labor disputes in municipal police and fire departments.

State and federal government employees are not within MERC's jurisdiction. State of Michigan employees are covered by state civil service laws and not by MERC, with the exception of the Michigan State Police, which are under MERC's jurisdiction for labor mediation and compulsory arbitration functions.

### **How may I contact the Bureau of Employment Relations and the Michigan Employment Relations Commission?**

Detroit Office  
Cadillac Place  
3026 W. Grand Blvd, Suite 2-750  
Detroit, MI 48202-2988  
(313) 456-3510  
(313) 456-3511 (Fax)

Lansing Office  
1375 S. Washington  
P.O. Box 30015  
Lansing, MI 48909  
(517) 373-3580  
(517) 334-9716 (Fax)

**[www.michigan.gov/merc](http://www.michigan.gov/merc)**

## **What is the National Labor Relations Board, and how do I contact that agency?**

The National Labor Relations Board is the federal agency that regulates collective bargaining relationships between most private sector employers and employees. The NLRB maintains two Michigan offices. Information Officers at the NLRB are generally available to assist members of the public. The NLRB's website, [www.nlr.gov](http://www.nlr.gov), provides a self-service automated system giving users immediate answers to many employment and labor-related questions. Much of this information is also applicable to the public sector.

Detroit  
Patrick V. McNamara Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226-2569  
(313) 226-3200  
(313) 226-2090 (Fax)

Grand Rapids  
82 Ionia NW, Room 330  
Grand Rapids, Michigan 49503-3022  
(616) 456-2679  
(616) 456-2596 (Fax)

The NLRB also has a toll free number (866) 667-NLRB.

## **What is an unfair labor practice?**

An unfair labor practice is a violation of the Public Employment Relations Act or the Labor Relations and Mediation Act. An example of an unfair labor practice by an employer is discriminating against, discharging, or threatening an employee for engaging in union activity or for joining with at least one other employee to improve wages, hours, or other conditions of employment. An employee need not be a member of a union to engage in activity protected by these laws. Other examples of unfair labor practices include failure to bargain in good faith, assisting or dominating the formation or administration of a labor organization, or encouraging or discouraging union membership. A breach of a collective bargaining agreement, standing alone, is typically not an unfair labor practice. Also, the law does not prohibit an employer from disciplining, discharging, or taking other action against an employee for good cause.

PERA also sets forth unfair labor practices by unions. For example, it is an unfair labor practice for a union to fail to bargain in good faith with an employer; it is also unlawful for a union to restrain or coerce employees in the exercise of their union rights. Labor organizations have the right to prescribe their own membership rules, and PERA does not involve itself in internal union matters.

## **What duty does a union owe toward its members?**

A union owes a duty of fair representation to its members, which means that it must not act arbitrarily, discriminatorily, or in bad faith. This standard has a very high threshold. A union has a duty to put the interests of the entire membership before any single member and has discretion to act within a wide range of reasonableness. As a result, a member does not have the right to demand that his/her union file a grievance on his/her behalf or to demand that the grievance be advanced to arbitration. Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the grievance procedure, the cost of pursuing the grievance, its significance, and the likelihood of success in arbitration.

### **What do I do if my employer or union has committed an unfair labor practice?**

If an employee believes that his/her employer or union has committed an unfair labor practice, he/she or the Union may file an unfair labor practice charge. Charge forms are available from BER upon request and are located on the MERC web site. A person or entity alleging an unfair labor practice is the “charging party,” and the employer and/or union against whom the charge is brought is the “respondent.” The statute of limitations requires that all unfair labor practice charges be filed within six months of the date they occurred, or they will be dismissed. The charge must include the names of the parties involved, the section of the statute allegedly violated, the dates of all relevant events, and all other important facts. The original written charge must be filed with MERC, along with four copies. The charging party must also serve the unfair labor practice charge on the opposing parties. The case will be assigned to an ALJ, who will set the date for hearing and will notify the parties.

### **What occurs at an unfair labor practice hearing?**

MERC does not investigate unfair labor practice charges. Thus, a party who files an unfair labor practice charge may wish to hire an attorney for representation. A charging party may represent him/herself at the hearing. Hearings are conducted in accordance with the procedures set forth in the General Rules and Regulations of the Michigan Employment Relations Commission and the Michigan Administrative Procedures Act. The procedural rules are posted on MERC’s website, [www.michigan.gov/merc](http://www.michigan.gov/merc). A statutes and rules booklet is available for purchase from MERC for a nominal cost.

The hearing will be held in Detroit or Lansing. The charging party should bring all relevant documents to support his/her claim, along with a copy of each document for the ALJ, the court reporter, the respondent(s), and for witnesses who testify. Both parties will have an opportunity to call witnesses and cross-examine witnesses. If a charging party wishes to call a witness, he/she may request a subpoena from the ALJ prior to the hearing. A court reporter will transcribe the hearing, and transcripts may be purchased. After the hearing, the parties usually have the opportunity to submit supporting briefs. The ALJ will issue a “Decision and Recommended Order” based upon the hearing testimony, exhibits, and any briefs.

### **What if I wish to appeal the ALJ’s decision?**

If a party does not agree with the ALJ’s Decision and Recommended Order, he/she may file an appeal, known as exceptions, with the Commission. The exceptions must be “filed” within twenty days of the ALJ’s Decision and Recommended Order, or the Order will be automatically adopted by the Commission. If a party chooses to file exceptions, he/she must file an original and four copies of the exceptions and two copies of the exhibits entered into the record at the hearing. A brief in support of the decision may also be filed. A party filing exceptions must also serve all documents filed upon the opposing party. The exceptions must contain specific references to the ALJ’s Decision alleged to be erroneous. The opposing party may then file a response to the exceptions and a brief in support of its response. The Commission will issue a Decision and Order in the matter. If a party wishes to appeal the Commission’s decision, he/she may file an appeal with the Michigan Court of Appeals and, ultimately, with the Michigan Supreme Court if leave is granted.

## MERC Corner

### **10 Frequently-Asked Questions\***

*Ruthanne Okun, Director, Bureau of Employment Relations  
and Brendan Canfield*

*We thought it would be helpful to print answers to questions frequently asked by persons calling the Bureau. This list of questions and answers will be continued in future issues. We hope that this information assists you.*

1. I need a 30-day extension of time to file my exceptions to an ALJ Decision and Recommended Order. Must my request be in writing and state a reason?

A request for an extension of time to file exceptions, cross exceptions, or briefs in support of an ALJ Decision and Recommended Order must be in writing and filed before the required filing date. At the same time, you must serve copies of the request on all parties. One extension of not more than 30 days will be granted to the moving party for any reason. Subsequent extensions will be granted by the Commission only upon a showing of good cause, which does not include inexcusable neglect by a party or its representative. (Rule 176(8)) NOTE: The Bureau Director does not have the authority to grant subsequent extensions of time or to determine good cause.

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2. **When is a document considered filed with MERC? Is it on the postmark date or the date on which MERC actually receives it?**

“Filing” with the Commission is the date on which a document is delivered to the Commission in either its Detroit or Lansing office and received and accepted by someone authorized by the Commission/Bureau. (Rule 181(1)) NOTE: A document is not considered filed on the date it is served on or mailed to the opposing party if it has not yet been received by MERC. The letter enclosing the ALJ decision indicates the date on which your exceptions must be **received** in our office.

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3. **I intend to subpoena witnesses for next week’s ALJ hearing. May I use a circuit court subpoena?**

*No. MERC has its own subpoena forms. Subpoenas to appear (and for documents) must be obtained from the ALJ, who is assigned to hear your case. They must include the Judge’s original signature and a raised State of Michigan seal. Accordingly, they cannot be faxed.*

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**4. I filed an appeal of a MERC Decision to the Court of Appeals. The court says that a docket sheet must be filed, along with the MERC record. Will you do that for me?**

When you file your appeal with the Court of Appeals, send us a letter enclosing a copy of your claim of appeal and requesting a docket sheet, which will be forwarded to the court with a copy to you. Sometime thereafter, the Court of Appeals will request the record in your case, which will be compiled and sent directly to the court. You will be notified when the record is sent to the court. NOTE: This same procedure applies to petitions for enforcement.

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**5. An election was conducted last year on March 15, 2005 – about one year ago today, and the union was certified shortly thereafter. We’ve been bargaining, but do not have a contract. We received a petition indicating that another union is seeking to represent this same unit. Will another election be held?**

PERA prohibits conducting an election within twelve months after a previous valid election has been held. Thus, when a labor organization wins the election and is certified as the representative, no petition from a rival organization or petition from employees to decertify will be accepted during the twelve-month period following the date of certification. If no labor organization was certified in the first election, the Commission will not accept a petition for the same unit until 60 days prior to the end of the twelve-month period following that election, and another election will not be conducted until the end of the twelve-month period.

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**6. My client, a labor union, is trying to avoid the cost of grievance arbitration, if at all possible. I know MERC offers contract mediation, but what about grievance mediation? If arbitration is required, what services does MERC offer?**

MERC provides grievance mediation to resolve grievances arising under a collective bargaining agreement, either as the final step in the grievance procedure or as a step prior to arbitration. Grievance mediation is offered without cost and has the advantage of allowing parties to fashion a remedy without being bound by contractual language. Contact MERC’s mediation supervisors or the Bureau Director for further assistance.

Should arbitration be necessary, MERC maintains a list of skilled arbitrators qualified to perform grievance arbitration in the field of labor relations. There is no charge for utilizing this service. Note that MERC’s involvement is limited to the appointment of the arbitrator. The arbitrator will set his or her own daily rate and other fees/costs and will set the time for the hearing. The rules governing the arbitration are established by the

parties' contract or by their mutual agreement. A Petition for Grievance Arbitration form is available under the "Forms" link on our website at [www.michigan.gov/merc](http://www.michigan.gov/merc).

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**7. My client, a labor union, is seeking to represent employees at two different employers: (1) a municipality and (2) a public school district. In both entities, the employees are represented by another union. Is there a time period in which they may file a petition for representation with MERC?**

If another labor organization or a group of employees seeks to file a petition for election in a unit where a collective bargaining agreement is already in effect, it must file the petition during a "window period" prior to the termination of the collective bargaining agreement or after the contract's expiration. The window period varies with the type of employer involved. In most public sector cases, the petition must be filed no earlier than 150 days and no later than 90 days prior to the termination date of the contract. In cases involving a public school district in which the contract expiration date is between June 1 and September 30, the window period is from January 2 through March 31 of the year in which the contract expires. In private sector cases, the petition must be filed no earlier than 90 days and no later than 60 days prior to the contract termination. A petition filed outside of the window period will ordinarily be dismissed. If a contract renewal has not been agreed upon during the insulated period, however, a petition may be filed after the expiration date of the agreement. (Rule 141(3))

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**8. After the ALJ issued a Decision and Recommended Order and I filed exceptions, my client and the union resolved their dispute. I want to withdraw the unfair labor practice charge before the Commission issues its decision, and I don't want the ALJ decision published. Can you make that happen?**

The charging party may withdraw charges at any time prior to the issuance of a proposed Decision and Recommended Order with the approval of the ALJ, subject to review by the Commission. A charge may be withdrawn by the charging party following the issuance of a proposed Decision and Recommended Order only with Commission approval. (Rule 154) The ALJ's Decision and Recommended Order will be published.

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**9. My opposing party has made false allegations in their response to my exceptions. I intend to file a reply brief and request oral argument. Will either/both be allowed?**

The rule for filing exceptions to an ALJ's Decision and Recommended Order, cross exceptions, or a brief in support does not provide for the filing of a reply brief, and replies and/or other subsequent



**filings will not be considered by the Commission, except in extraordinary circumstances. While oral argument may be requested, it is granted only in exceptional circumstances.**

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*10. How many copies of the exhibits do I need for my hearing before the ALJ, and how many should I file with my exceptions?*

At an ALJ hearing, a party should bring all relevant documents to support his/her claim, along with a copy of each document for the ALJ, the opposing party or parties, and a witness who may testify. When filing exceptions, the appealing party must file two additional copies of each exhibit submitted at hearing by either party. (Rule 176(1))

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